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APPLICATION NUMBER	08/881,393	FILING DATE	06/24/97	FIRST NAMED APPLICANT	FOJSTAD	ATTY. DOCKET NO.	0 7885-3305
MARK T SKOOG      MERCHANT GOULD SMITH EDELL WELTER & SCHMIDT 3100 NORWEST CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS MN 55402						EXAMINER	NGUYEN, R
						ART UNIT	1641
						PAPER NUMBER	7
						DATE MAILED:	09/14/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 7/17/98
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.
- A shortened statutory period for response to this action is set to expire 2 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 17-42 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☒ Claim(s) 17-42 are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION FOR THE FOLLOWING PAGES—

*Election/Restriction*

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

fibronectin receptor  
 $\beta$ -integrin  
vitronectin receptors  
 $\alpha\gamma\beta 3$ -integrin  
P-selectin  
GMP-140  
CD44-variants  
N-CAM  
E-cadherin  
Le<sup>y</sup>  
CEA  
EGF receptor  
c-erbB-2  
HER2,  
transferin receptor  
TNF-receptor  
high molecular weight antigen (HMW 250,000)  
p95-100  
TP-1  
TP-3  
Mv 200kD  
Mv160kD  
MOC-31 epitope  
cluster 2 epithelial antigen  
MUC-1 antigen  
DF3-epitope  
gp290kD  
prostate high molecular antigen (Mv>400kD)  
TAG 72  
bladder carcinoma antigen  
Mv 48kD colorectal carcinoma antigen  
lung carcinoma antigen Mv 350-420kD  
Mel-14 epitope  
 $\beta_2$ -microglobulin  
Apo-1 epitope  
pan human cell antigen  
insulin receptor

FGF  
adhesion membrane molecule  
MDR proteins  
breast carcinoma cells  
ovarian carcinoma cells  
lung carcinoma cells  
melanoma  
sarcoma  
glioblastoma  
cancer cells of the gastrointestinal tract  
cancer cells of the genitourinary tract  
cancer cells of the reticuloendothelial system  
cells associated with non-neoplastic diseases: cardiovascular cells, neurological cells,  
pulmonary cells, autoimmune cells, gastrointestinal cells, genitourinary cells and  
reticuloendothelial cell.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 17-33 and 41-42 are generic. Applicant must elect one type of cell, i.e. normal or malignant cell; one type of antigen, i.e. those listed above and in claims 34, 36, 37, 38, 39 and 40.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to Mark Skoog on August 20, 1998 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. The Group and Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group 1600, Art Unit 1641.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao-Thuy Nguyen whose telephone number is (703) 308-4243. The examiner can usually be reached Monday through Friday, from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Christopher L. Chin*  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800 1641

BTN

September 1, 1998